***THE HONOURABLE MR.JUSTICE V.V.S. RAO**

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+W.P. NO. 12214 OF 2000

% 11-11-2005

#GRANDHI MADHAVA RAO,

..PETITIONER.

VS.

$ THE MUNICIPAL COMMISSIONER

ELURU MUNICIPALITY, ELURU,

WEST GODAVARI DISTRICT.

..RESPONDENTS

! COUNSEL FOR THE PETITIONER: SMT. N.(P).ANJANA DEVI

^ COUNSEL FOR THE RESPONDENTS: G.P. FOR MUNICIPAL ADMINISTRATION

SRI S. NAGESWARAREDDY

< Gist :

> Head Note :

? CITATIONS :

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 12214 OF 2000

Date: 11.11.2005

BETWEEN:

Grandhi Madhava Rao

.... PETITIONER

And

The Municipal Commissioner,

Eluru Municipality, Eluru, West Godavari District.

…. RESPONDENT

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 12214 OF 2000

ORDER:

The petitioner is a retired Government servant. He obtained building permission dated 1.3.1983 for construction of ground floor portion of a residential house, at plot No.51 of N.G.G.O's Colony in Eluru. Again, in 1993 he applied for, and obtained building permission on 1.3.1993 for construction of first floor portion. The respondent Municipality issued a show cause notice under sub-section (1) of Section 217 of the A.P. Municipalities Act, 1965 ('the Act' for brevity) calling upon the petitioner to show cause as to why the unauthorized construction should not be removed. It was pointed out in the said show cause notice under Section 217 (1) of the Act that (i) the petitioner constructed staircase in the front portion of the building in violation of Rule 9 (2)(i)(a) of the Building Rules in Schedule-III of the Act, and that (ii) he constructed a out-house in the back portion of the building in violation of Rule 9 (4) of the Building Rules in Schedule-III annexed to the Act. The petitioner was required to submit explanation within seven days to the show cause notice. However, he did not do so. He filed a writ petition being W.P.No.10829 of 2000. This Court by order dated 23.6.2000 disposed of the said writ petition at the admission stage, giving liberty to the petitioner to submit explanation within a period of one week from the date of the said order, and the Commissioner of Eluru Municipality was directed to consider the same before issuing final orders keeping in view the earlier litigation between the petitioner and his neighbours. The petitioner then submitted an explanation to the respondent Municipality on 25.6.2000 denying the allegations made in the preliminary notice under Section 217(1) of the Act. After considering the same, the respondent Municipality passed orders on 4.7.2000 confirming the preliminary/provisional order dated 13.6.2000. This is assailed in this writ petition.

A counter affidavit is filed by the respondent Municipality denying various allegations made by the petitioner. It is stated that the explanation submitted by the petitioner has been considered before passing orders, directing the petitioner to remove the unauthorized constructions made by him.

The learned counsel for the petitioner Sri P. Satyanarayana strenuously contends that when Pilli Krishna Kumari and Marta Samuel made unauthorized constructions on the road margins as well as on the road, the petitioner filed a suit being O.S.No.519 of 1989 and the same was decreed on 4.11.1996. The appeal filed by the defendants was also dismissed on 6.1.1999 and the second appeal was also ended in dismissal on 20.7.1999. When the petitioner filed E.P. for a direction to Eluru Municipality to remove the encroachments, the Municipality submitted a revised plan of the road, reducing the width of the road to 13' to 15', which was objected to by the petitioner. Therefore, the municipal officials were not happy with the attitude of the petitioner and foisted notice under Section 217 (1) of the Act. Secondly, he strenuously contends that the petitioner has made the

construction of staircase to first floor and the out-house in the rear side of the house is strictly in accordance with the building permission sanctioned by the Municipality in 1983 and 1993, and therefore, sub-sections (1) and (3) of Section 217 of the Act are not attracted.

Insofar as the first submission is concerned, even if the petitioner did not agree with the proposal of the Municipality to reduce the width of the road on the Southern side of the petitioner's house 13' to 15', it is not possible to draw an inference that it itself is a reason for the Municipality to issue the show cause notice of unauthorized construction. When there is no allegation or whisper in the affidavit, it is not possible to accept the contention that the defendants in the suit of Pilli Krishna Kumari and Marta Samuel were behind the Municipality in issuing the notice under Section 217 of the Act. Further, there cannot be any denial that being a public authority, the Municipal Commissioner and other officials are deemed to have taken action strictly in accordance with the provisions of the Act, unless other things are proved. If any specific mala fides are attributed against any official of the Municipality, it is possible to accept such contention. But, when the Municipality, as an incorporated body, initiates action, the allegations as are now made, have no basis.

Insofar as the second aspect is concerned, it is necessary to read the Building Rules in Schedule-III annexed to the Act. Rule 9(2) & (4) read as under.

9. **Space about buildings and height of buildings** :-

1. Omitted

2. (i) In the case of public or private street, not being a conservancy lane, no building (except plinth, steps and other similar structure not being above the floor level of the building and any fence or compound wall not exceeding 2 metres in height from ground or site level) shall be built.

   a. within 1.5 metres of the boundary of the street;

   b. in the space between the building line and the street alignment as defined under Section 175 of the Act;

   Provided that any sunshade, balcony, canopy, eaves or other similar projecting portion of the building not exceeding 1 metre in width may be allowed above a height of 3 metres measured from ground level where no pillar, wall or other structure is erected in the open space for support, and where there is clear space of 6.5 metres between the center line of road and the projections.

   (ii) Where a site abuts one two or more streets, the front set back shall be provided on all the streets.

   (iii) Where a site is away from any street, the front set back shall be equal to half the height of the building and shall in no case be less than 4.0 metres in depth.

   (iv) No building shall be less than 9.5 metres away from the center line of any street.

3. Omitted.

4. Between the rear boundary of every building site and the building itself, there shall be an open space exclusively belonging to such building and extending laterally throughout the width of the site to a depth of not less than 3 metres;

> Provided that where this depth cannot be obtained throughout the entire width of the site by reason of the exceptional shape of the site or other exceptional circumstances, it shall suffice if the mean depth is not less than three metres.

As per Section 230 of the Act, the Building Rules in Schedule-III shall form part of Chapter-IV of the Act, which contains the provisions regarding the Building Regulations. All the building permissions and constructions, by reason of such permission shall have to be strictly in accordance with the Building Rules in Schedule-III. Rule 9(4) requires that there shall be open space exclusively belonging to a building between rear boundary of building site and building itself. Therefore, if there is a compound wall to a building no construction is permissible between the compound wall and actual building. The learned counsel for the petitioner has taken this Court through the two building plans, which accompanied his application for permission in 1983 as well as application in 1993. In 1983, when he constructed ground floor building there is open space on the Northern side, and except the septic tank and the well nothing was proposed. Curiously, when he submitted the building plan in 1993, the plan shows as if there is out-house on the Northern side immediately abutting the compound wall, which was not there in 1983 plan. Therefore, even if the petitioner has not concealed the factum of the construction of an out-house, such construction is ex facie illegal and therefore, I do not find any illegality insofar as the allegation made by the respondent Municipality in relation to Rule 9(4).

A reading of Rule 9(2) extracted hereinabove would show that no building is permissible in the space between the building line and the street alignment except the plinth and space not being the steps above the floor level. A plain reading would only means that a person can construct steps to go into the ground floor building from the compound wall edge and steps to go to the first floor from the ground floor level, cannot be built in the space between the building line and the street alignment. However, construction of steps from the first floor to the other floors above, if any, is permissible. That is made clear by the phrase in Rule 9(2) (i) " steps ……. not being above the floor level of the building." Though, an attempt is made by the learned counsel for the petitioner that in the open space construction of steps is permissible, having regard to the plain language of Rule 9(2)(i), it is not possible to countenance the submission.

Section 217 of the Act is attracted when the building is constructed otherwise than in accordance with the plan. When any action is initiated under Section 217 of the Act, the possible defence available to the owner of the building is to show that the construction made is strictly in accordance with the approved plans and specifications, and that no construction is taken up or completed otherwise than the building plan. In case of minor deviations, though the Act is silent, it is for the Commissioner or Municipal council as the case may be to take appropriate action on an application by a person on whom a notice under Section 217 of the Act is served. Insofar as this Court is concerned, enquiry should be confined to examine the question whether construction was made strictly in accordance with the building permission or not. Applying this test, this Court, for the above reason, hold that the Commissioner was justified in issuing notice under Section 217 (1) of the Act initially, and confirming the same under Section 217(3) of the Act, on receiving and considering the explanation of the petitioner.

The Writ Petition is devoid of merit and is accordingly dismissed. No costs.

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(**V.V.S. RAO, J.)**

11th November, 2005

Js.

L.R. Copy to be marked.